IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

WP(C).No. 32922 of 2007(T)

PETITIONER:

LALHIKA.L., W/O.LATE.K.ACHUTHAN,
PUTHANVILAL VEEDU, CHEMMANTHOOR,
PUNNALOOR P.O., KOLLAM DISTRICT.

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS:

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1. KERALA STATE DEVELOPMENT CORPORATION FOR SCHEDULED CASTE AND SCHEDULED TRIBES LTD., REPRESENTED BY THE REGIONAL MANAGER, REGIONAL OFFICE, THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT., GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

3. DEPUTY COMMISSIONER, COMMERCIAL TAXES, THIRUVANANTHAPURAM.

4. ACCOUNTANT GENERAL (KERALA), THIRUVANANTHAPURAM.

R2 TO R4- BY G.P.SRI. BEJOY CHANDRAN
R1-BY ADV.SRI. M.K. CHANDRAMOHAN DAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI,J.

W.P (C) No. 32922 of 2007

Dated this the 19th November, 2007

J U D G M E N T

Petitioner's husband K.Achuthan died on 4.7.2005 while working as Sales TAx Inspector in the office of the Deputy Commissioner, Commercial Taxes. Apparently, the petitioner's husband stood as surety for a loan availed by Sri. C.Sunil Kumar from the 1st respondent for purchase of a Jeep in the year 1995. Since there was default in the repayment of loan, proceedings were taken against the Principal Debtor and Surety. In the meanwhile, petitioner's husband died. But the DCRG and family pension due under the account of the petitioner's husband have not been disbursed so far.

2. On instructions, learned standing counsel for the 1st respondent submits that petitioner's husband and the petitioner had agreed to act as surety for the loan availed by Sri.Sunil Kumar and it is therefore that the Corporation is entitled to proceed against the Principal Debtor and surety. But at the same time, it is made clear by the Standing Counsel that no separate consent was given by the petitioner's husband for recovering the amount due from the loanee, in the case of default, from the DCRG that becomes payable; in other words, there is no consent in terms of Note I Rule 3, Part III of the K.S. R.

3. In the circumstances, after hearing the learned counsel for the petitioner, the learned standing counsel for the 1st respondent and the learned Government Pleader, this writ petition is disposed of directing the 3rd respondent to issue a NLC/LC in the name of late Achuthan, within two months from the date of receipt of a copy of this judgment.

On issuance of such proceedings, the retirement benefits due under the account of late Achuthan shall be disbursed to the petitioner, in accordance with law, within one month thereafter. It is made clear that the right of the 1st respondent Corporation to proceed against the petitioner as the legal heir of Achuthan and as surety will be left unaffected by this judgment and the direction is operative only with regard to the retirement benefits due under the account of late Achuthan. Petitioner's claim for interest on the delayed payment of DCRG, in my view, cannot be decided under Article 226 of the Constitution of India. Therefore, the said claim is left open.

(V.GIRI, JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007